Filed 5/3/19 In re D.O. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.O., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. D.O., Defendant and Appellant.	E070768 (Super.Ct.No. J273552) OPINION

APPEAL from the Superior Court of San Bernardino County. Winston S. Keh, Judge. Affirmed.

Aurora Elizabeth Bewicke, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

In 2015, D.O. became a dependent of the San Bernardino County juvenile court. (Welf. & Inst. Code, § 300, subds. (b) & (g).)[1] In 2017, the Ventura County juvenile court found D.O. came within the Ventura County court's jurisdiction as a delinquent. (§ 602.) Ventura County transferred D.O.'s delinquency case to San Bernardino County for disposition. (§ 750.) The San Bernardino County juvenile court placed D.O. on prewardship probation (§ 725, subd. (a)), then revoked the prewardship probation, declared D.O. a ward, and placed her on probation. D.O. contends (1) the juvenile court violated her constitutional right of due process, and (2) her juvenile court counsel provided her with ineffective assistance. We affirm the disposition order.

FACTUAL AND PROCEDURAL HISTORY

A. DEPENDENCY CASE

D.O. is female and was born in August 2002. In September 2015, San Bernardino County Children and Family Services (the Department) filed a dependency petition to protect D.O. The Department alleged D.O.'s mother failed to protect D.O. (§ 300, subd. (b)) and that D.O.'s father left D.O. without any provision for support (§ 300, subd. (g)). The record includes a minute order reflecting a combined jurisdiction and disposition hearing in the dependency case was continued. There is little information about the dependency proceedings in the record.

[1] All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

B. VENTURA COUNTY DELINQUENCY CASE

On August 30, 2017, the Ventura County District Attorney's Office filed a delinquency petition (§ 602) alleging that, on August 10, 2017, D.O. received stolen property valued at less than $950 (Pen. Code, § 496, subd. (a)). Specifically, it was alleged that D.O. received $63 in cash. It was further alleged that D.O. was residing in a group home in Ventura County.

A detention report was filed in the delinquency case. The report reflected that D.O. was transferred from a San Bernardino County group home to a Ventura County group home due to a history of running away from San Bernardino County homes. Allegedly, on August 6, D.O. ran away from the Ventura County group home. D.O. and two friends went to a park where they looked for unlocked vehicles. The three friends opened three unlocked vehicles, and took cell phone chargers, approximately $80 in cash, and a GoPro camera.

On September 25, the Ventura County juvenile court held a hearing in the delinquency case, but D.O. had run away from her placement on September 2 and her whereabouts were unknown. The juvenile court issued a bench warrant for D.O.

On October 31, the Ventura County juvenile court held a jurisdiction hearing in the matter. At the hearing, D.O.'s Ventura County lawyer said, "[T]his is [D.O.'s] first interaction with the criminal justice system, and I believe typically here she would be potentially eligible for 654. [¶] However, as she's a 300 out of San Bernardino County, our request today would be to admit for the sole purposes of dispoing and transferring to Santa [*sic*] Bernardino County. And I wanted to see if the Court would allow to put on

the record or in the file that it would be okay for her to withdraw that admission if she is subsequently eligible for 654 in San Bernardino County."[2] The juvenile court responded, "I certainly would have no objection to the court then making that determination."

D.O. said she understood her constitutional rights and waived her rights. D.O. said she understood that by admitting the truth of the allegation, she could be placed in custody for up to one year. D.O. admitted that she received $63 in stolen cash. D.O.'s counsel stipulated to the factual basis for D.O.'s admission and joined in her waiver of rights. The Ventura County juvenile court found true the allegation that D.O. received stolen property valued at less than $950 (Pen. Code, § 496, subd. (a)).

The Ventura County juvenile court explained that the case would be transferred to San Bernardino County for disposition. The Ventura County juvenile court said, "The minutes should reflect the Court has no objection to the receiving Court vacating her admission if that Court believes an informal handling disposition is appropriate." The Ventura County minute order from the October 31 hearing provides, "This Court has not objection [*sic*] to . . . the minor being allowed to withdraw her plea in San Bernardino County for a grant of 654.2 WIC informal probation."

---

[2] The transfer-out statute provides: "[T]he entire case may be transferred to the juvenile court of the county wherein such person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over such minor . . . ." (§ 750.)

C. TRANSFER TO SAN BERNARDINO COUNTY

On November 6, the San Bernardino County juvenile court held a transfer-in hearing in the case. D.O.'s first San Bernardino County delinquency attorney, Ms. Lee, requested D.O. be released to the Department. The People asserted D.O. should remain in juvenile hall because she posed a flight risk. The People asserted D.O. ran away from her Ventura County group home and was detained in Riverside County, thus reflecting her ability to travel. D.O.'s attorney said, "[S]he would likely be a flight risk whether the release is today or in two weeks. She will likely be on probation. Regardless of when she's released, it will be to CFS care, and it will be to a group home."[3]

The juvenile court referred the case to the section 241.1 committee. The juvenile court found D.O. was a flight risk and therefore ordered her detained in the care of the probation department pending the disposition hearing. The San Bernardino County juvenile court accepted the transfer from Ventura County.

D. SECTION 241.1 REPORT

The San Bernardino County Section 241.1 Committee (the Committee) issued a report in the case because D.O. was involved in both the dependency and delinquency systems. The report reflected that D.O. had been "in multiple placements including foster and group home placements." D.O. ran away from facilities throughout her dependency case. As part of the dependency case, D.O. "has received intensive

[3] We infer that "CFS" refers to San Bernardino County Children and Family Services, i.e., the Department.

therapeutic services through Wraparound and has had multiple involuntary psychiatric hospitalizations." The Committee opined that D.O. "would benefit from additional mental health services including individual therapy and psychotropic medication." The Committee recommended D.O.'s case "be transferred to the [Department] CSEC social worker."[4] Further, the Committee recommended D.O. be placed on summary probation. The Committee marked a box on the report indicating the Committee recommended that D.O. remain a section 300 dependent rather than a section 602 ward.

E. PROBATION REPORT

The probation department's report reflects D.O. "admitted to and was found true of [*sic*] Count 1 as alleged." The report continues, "Regarding her needs, the youth would benefit from Probation Department intervention. As she has few current risk factors, she seems to be capable of success at a lower level of supervision. Given the misdemeanor-level offense and the addition of [the Department's] oversight, WIC 725(a) Summary Probation appears appropriate in this case and is therefore respectfully recommended."

F. DISPOSITION

On November 15, the juvenile court held a disposition hearing in the delinquency case. At the beginning of the hearing, the court remarked that the probation department recommended summary probation with D.O. being released to the Department. (§ 725, subd. (a).) D.O.'s second San Bernardino County delinquency attorney, Ms. Tokatlian,

---

[4] We infer that "CSEC" refers to commercially sexually exploited children. (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1515, fn. 14.)

said, "I am submitting on the summary probation recommendation." The juvenile court placed D.O. on prewardship probation. (§ 725, subd. (a).) The terms of probation included, among others: (1) being home every night from 9:00 p.m. to 6:00 a.m.; (2) performing 40 hours of community service; and (3) attending school on a daily basis.

The court said, "[D.O.], although you're not declared a ward of the court, you shall be placed in the custody of [the Department], maintained in the home of [the Department's] placement setting on terms and conditions of non-wardship probation." D.O. said she understood the terms of her probation.

G. REVIEW HEARING

The probation department provided a report to the juvenile court. The report reflected that, on April 20, D.O. refused to attend school. D.O. said she would not attend school because she did not feel safe at school. The probation department concluded D.O. violated the term of probation requiring her to attend school. On April 24, D.O. left her group home without permission at 1:30 a.m. and returned at 4:32 a.m. the same day. D.O. left to visit her brother after the group home staff denied her permission to visit him. The probation department concluded D.O. violated the probation condition requiring her to stay home at night. D.O. failed to submit proof of her community service. The probation department concluded D.O. violated the probation condition requiring her to complete 40 hours of community service.

The probation department's report concluded: "It appears she is not a danger to the community as she has not been cited or arrested for any new law violations;

however, she is a danger to herself. She does not attend school and roams the streets of Bakersfield, CA, in the early morning hours, without proper adult supervision. It is therefore respectfully recommended [D.O.'s] grant of WIC 725(a), Summary Probation, be lifted and she be declared a ward of the Court, and she remain in the custody of [the Department], with [the Department] as lead."

On April 30, the juvenile court held a review hearing. D.O.'s third San Bernardino County delinquency attorney, Ms. Neudauer, submitted without argument. The juvenile court accepted the probation department's recommendation. The court revoked D.O.'s prewardship probation (§ 725, subd. (a)), declared D.O. a ward of the court, ordered that D.O. remain in the Department's custody, ordered that the Department be the lead agency, and ordered that D.O. continue to comply with the terms of probation. The court requested another section 241.1 report to determine if the probation department should become the lead agency in the case.

H. HEARING ON SECTION 241.1 REPORT

The Committee submitted a report to the juvenile court. The report reflected D.O. had been in three homes since transferring back to San Bernardino County—one in San Diego, one in Perris, and one in Bakersfield. The Committee recommended the Department serve as the lead agency in the case.

On May 22, the juvenile court held a hearing to address the Committee's report. D.O. was not at the hearing.[5] The juvenile court explained that D.O. needed to withdraw her admission so the case could proceed. The juvenile court then changed its position and explained that D.O. did not need to be present because D.O. had already been declared a ward of the court and the court was merely determining the lead agency in the case.

D.O.'s fourth San Bernardino County delinquency attorney, Mr. Douglass, said, "[S]he would have had a right to actually have the 241 hearing first prior to entering into an admission for the violation, 725 probation. And then the Court would have also had the opportunity to get the 241 committee's report prior to actually sentencing her. So I think what happened was, she admitted and then since—she was dispo'd on the same date, on 4/30."

The juvenile court responded, "She didn't admit. She was on summary probation when she came to us on April 30th. All we did was lift the summary and convert it into formal probation. She was already on probation. And so what the Court did was because we declared her a ward that by operation of law, she became a dual status child. So I referred the matter to the 241 committee to determine who is going to take lead. Is there a change in lead? That's all it was. She did not make an admission."

---

[5] The "appearances" portion of the reporter's transcript reflects D.O. was present in court. However, in the dialogue section of the transcript, the court remarked that D.O. was not present. We rely upon the court's observation and conclude D.O. was not present.

D.O.'s counsel asked, "You're saying, your Honor, that without an admission or a denial, the Court just summarily lifted 725 and placed her on formal probation on 4/30?" The People responded, "[W]hen the issue of 725 being lifted was brought up, did she admit that there was a violation of her summary probation? Was there a hearing on that? Does she have a right to have a hearing on the matter of whether there was violation of summary probation or not? I think she does. But—was that an evidentiary hearing?" The People continued, "My notes indicate[] that 725 was lifted. It does not have the magic words, 'minor admits violating summary probation.' "

The court's judicial assistant explained that nobody requested a contested disposition hearing. D.O.'s attorney replied, "Maybe just in the abundance of caution, we can get her back and explain it to her and put it on the record." The judicial assistant said, "It's been over six months. Is she already at her expiration?" The juvenile court said, "My understanding is if a child is put on 725 there is no petition. You just convert it. If she fails to comply with the terms of 725(a), then probation sets a special hearing notifying counsel and the Court that the minor has not complied. The Court now has an option of converting—lifting 725 declaring her a ward, which is what happened here. . . . [¶] So in response to your questions after reviewing the file, no, there would not be an admission. Ms. Neudauer was here. I lifted the summary probation based on probation's recommendation, declared her a ward, [and] referred the matter to 241 . . . . So that's where we are today."

D.O.'s attorney explained that it was problematic to revoke the prewardship probation prior to everyone having reviewed the Committee's report. D.O.'s attorney

requested the hearing be conducted again, with the Committee's report and D.O. present at the hearing, "in the abundance of caution." The People asked, "So you are indicating that perhaps if you had the 241 report, you would have requested a contested dispo. after the 725 was lifted?"

The juvenile court explained that the purpose of the Committee's report was only to determine which agency would be the lead in the case. The court continued, "And also keep in mind, she was placed on summary, what, in November. So the Court would have lost jurisdiction if I did not declare her a ward at that point. [¶] . . . In this case I really don't believe that the minor's substantive rights have been violated. She did not comply with the terms of 725. Probation recommended the Court lift the formal probation. We had a hearing. She was represented by counsel. I followed probation's recommendation. And I merely referred it to the 241 committee . . . in terms of determining who takes lead. That's all it was."

D.O.'s attorney objected to D.O.'s admission having been taken prior to the receipt of the Committee's report. The court replied, "There was no admission. That's the whole thing." D.O.'s attorney said, "[T]he minor has the right to object to the lifting of 725, right? Everyone agrees with that, that the minor has a right to object and set it for a hearing whether or not she's in violation. [¶] And so that not objecting or withholding the objection of the lifting of 725, or not exercising the right to a hearing on the matter, is akin to an admission. Okay, it's [a] violation. You got me. I'm going to do what you asked me to do, to be placed on formal probation.

"Now if she did that, this minor in this particular case, did that without the 241 committee's meeting—and perhaps they would have said, let's keep her a 300. Let's keep her as a [Department] only. She does not need to be declared a ward. We could have taken that recommendation back to this Court and back to the People and said, [the Department] does not want her to be declared a ward."

The court responded, "If there was a failure to object by someone in your office, that comes to an omission, it's malpractice. Why—I mean, that goes to the competence of counsel. Minor was represented by an attorney at that hearing. If she didn't object, it's waived." The juvenile court invited counsel to file briefing on the issue. D.O.'s attorney said he would file an appeal instead. The juvenile court accepted the recommendation of the Committee and ordered that D.O. be a dual-status minor with the Department as the lead agency. On June 25, 2018, a notice of appeal was filed on behalf of D.O.

I. HEARINGS POST-NOTICE OF APPEAL

On September 21, 2018, the juvenile court held a review hearing in the delinquency case. Ms. Tokatlian again appeared as counsel for D.O. and moved the court dismiss the case (§ 782). The court denied the motion.

On September 25, the juvenile court held a hearing in the dependency case. The juvenile court ordered D.O.'s permanent plan be a permanent plan living arrangement, with a goal of guardianship. The court ordered that D.O. continue to reside in a group home. Additionally, the court ordered that the case remain dual-status with the Department as the lead agency.

DISCUSSION

A. CONTENTIONS

First, D.O. asserts the juvenile court violated her right of due process by revoking her prewardship probation and declaring her a ward of the court without asking if she denied violating the terms of her probation. Second, D.O. contends the juvenile court violated her right of due process by revoking her prewardship probation and declaring her a ward of the court without an updated section 241.1 committee report. Third, D.O. contends the juvenile court violated her right of due process by imposing prewardship probation (§ 725, subd. (a)) when D.O. was a section 300 dependent. Fourth, D.O. contends she was denied effective assistance of counsel because her first San Bernardino County delinquency attorney failed to move to withdraw D.O.'s Ventura County admission.

B. DUE PROCESS

1. *STANDARD OF REVIEW AND DUE PROCESS LAW*

We apply the de novo standard of review to an alleged violation of constitutional rights. (*In re J.H.* (2007) 158 Cal.App.4th 174, 183.) "While the precise impact of the Fourteenth Amendment due process clause in delinquency proceedings differs from that in the adult context, the United States Supreme Court has extended constitutional protections associated with criminal prosecutions to minors alleged to be juvenile delinquents, including notice of charges; right to confrontation and cross-examination; the privilege against self-incrimination [citation]; the standard of proof beyond a

reasonable doubt [citation]; and double jeopardy." (*In re Kevin S.* (2003) 113 Cal.App.4th 97, 108.)

2. *IMPOSITION OF PREWARDSHIP PROBATION*

We examine whether the juvenile court erred by not asking D.O. if she denied the alleged probation violations prior to revoking D.O.'s prewardship probation.[6]

Section 725 provides the juvenile court two options "[a]fter receiving and considering the evidence on the proper disposition of the case." The first option is: "If the court has found that the minor is a person described by Section 601 or 602, by reason of the commission of an offense . . . it may, without adjudging the minor a ward of the court, place the minor on probation, under the supervision of the probation officer, for a period not to exceed six months. . . . If the minor fails to comply with the conditions of probation imposed, the court may order and adjudge the minor to be a ward of the court." (§ 725, subd. (a).) The second option is: "If the court has found that the minor is a person described by Section 601 or 602, it may order and adjudge the minor to be a ward of the court." (§ 725, subd. (b).)

"Section 725[, subdivision (a),] authorizes the juvenile court to put a halt to an adjudication before the order of wardship and disposition if it finds a minor will benefit from a prewardship grant of probation. Thereafter, if a court is dissatisfied with a minor's performance on probation, the court may reinstitute the wardship proceedings."

---

[6] The People contend D.O. forfeited this contention by failing to object in the juvenile court. We choose to address the merits of the contention because it concerns an alleged violation of D.O.'s constitutional right of due process. (See *People v. Marchand* (2002) 98 Cal.App.4th 1056, 1061 (*Marchand*).)

(*In re Deon W.* (1998) 64 Cal.App.4th 143, 146-147.) In order for the hearing on the alleged probation violation to be an evidentiary hearing, the minor must request an evidentiary hearing. (*Id.* at p. 147.)

In the probation department's April 24, 2018, report, it recommended "[D.O.'s] grant of WIC 725(a), Summary Probation, be lifted and she be declared a ward of the Court, and she remain in the custody of [the Department], with [the Department] as lead." Thus, D.O. had notice prior to the April 30 hearing that the probation department was seeking to revoke D.O.'s prewardship probation and have her declared a ward of the court. Despite this notice, D.O. did not request an evidentiary hearing concerning her alleged probation violations.

Because D.O. did not request an evidentiary/contested hearing, the juvenile court had no reason to ask D.O. if she denied the allegations that she violated the terms of her prewardship probation. The juvenile court proceeded on the report of the probation department, only asking D.O.'s counsel if she wished to present any argument. D.O.'s counsel submitted without argument. Because D.O. did not request an evidentiary hearing concerning the alleged probation violations, the juvenile court did not err by not asking D.O. if she denied the allegations. (*In re Deon W.*, *supra*, 64 Cal.App.4th at p. 147.)

3. *SECTION 241.1 REPORT*

We examine whether the juvenile court erred by declaring D.O. to be a ward of the court without an updated section 241.1 report.[7]

" 'Pursuant to section 241.1, whenever it appears that a minor may fit the criteria for both dependency and wardship, "the county probation department and the child welfare services department shall . . . initially determine which status will serve the best interests of the minor and the protection of society." The assessment of a minor under section 241.1 is statutorily required to include, at a minimum, consideration of . . . eight factors . . . . Once the recommendations of both departments are presented to the juvenile court, it remains for the court to "determine which status is appropriate for the minor." '

"A written report containing this assessment must be filed in connection with the delinquency petition. Whenever '"possible, the determination of status must be made before any petition concerning the child is filed" [citation] and that . . . "assessment must be completed as soon as possible after the child comes to the attention of either department" [citation]. In addition, [California Rules of Court,] rule 5.512 is quite specific regarding the timing for the actual assessment report: "If the child is detained, the hearing on the joint assessment report must occur as soon as possible after or concurrent with the detention hearing, but no later than 15 court days after the order of

---

[7] The People contend D.O. forfeited this contention by failing to object in the juvenile court. We choose to address the merits of the contention because it concerns an alleged violation of D.O.'s constitutional right of due process. (See *Marchand, supra*, 98 Cal.App.4th at p. 1061.)

detention and before the jurisdictional hearing. If the child is not detained, the hearing on the joint assessment must occur before the jurisdictional hearing and within 30 days of the date of the petition." [Citation.] Notice of the hearing—including a copy of the joint assessment report—must be provided to various interested parties at least five calendar days before the hearing.' [Citations.] The assessment, report, and juvenile court determination of the Minor's status as a dependent, ward, or 'dual status' must be made regardless of whether a county has adopted a 'dual status' protocol. " (*In re R.G.* (2017) 18 Cal.App.5th 273, 283-284.)

The delinquency proceedings were beyond the jurisdiction phase when D.O.'s attorney objected seeking a section 241.1 report. Because a section 241.1 report should be obtained before the jurisdiction phase of the second proceedings (in this case the delinquency proceedings), counsel's request for a section 241.1 report in the disposition phase of the delinquency proceedings was untimely.

D.O. contends a section 241.1 report was required after the revocation of her prewardship probation because section 241.1, subdivision (a), includes the following language: "*Whenever* a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall . . . initially determine which status will serve the best interests of the minor and the protection of society." (Italics added.) D.O. relies on the statute's inclusion of the word "whenever" to support her position that a section 241.1 report was needed when her prewardship probation was revoked.

Case law has concluded that "whenever" means prior to the jurisdiction phase of the second proceeding (in this case delinquency proceedings). Case law has explained, "The assessment, report, and hearing on that report should have been made prior to or, at the very latest, contemporaneously with the filing of the juvenile wardship petition. Having an assessment report and hearing on the report prior to the filing of a petition may obviate the necessity of even filing a juvenile wardship petition if the juvenile court adopts a committee's potential recommendation that the child continue to be treated as a dependent, rather than a ward, of the court. [¶] Moreover, even if the section 241.1 assessment, report, and hearing are not completed prior to the filing of the juvenile wardship petition, they *must* be conducted *prior* to the jurisdictional hearing *and* within 30 days of the filing of the juvenile wardship petition." (*In re R.G.*, *supra*, 18 Cal.App.5th at pp. 285-286, fn. omitted.)

D.O. does not explain why the meaning of the phrase "[w]henever a minor appears to come within the description of both Section 300 and Section 601 or 602" should be expanded to include postjurisdiction proceedings in the minor's second case (in this case the delinquency proceedings). At a postjurisdiction delinquency proceeding, the minor no longer "appears" to come within the description of section 602. Postjurisdiction, if the allegations have been found true, the minor *does* come within section 602. (See § 602 [any minor who violates the law comes within the jurisdiction of the juvenile court]; see also § 702 ["After hearing the evidence, the court shall make a finding . . . whether or not the minor is a person described by Section 300, 601, or 602."].) Thus, the portion of section 241.1 that reads, "[w]henever a minor

appears to come within the description of both Section 300 and Section 601 or 602," can only apply prejurisdiction, because postjurisdiction there is not an "appearance" of coming within section 602—the minor either does or does not come within section 602. (See *People v. Loeun* (1997) 17 Cal.4th 1, 9 [when interpreting statutes we begin with the plain meaning of the statute's words].) Accordingly, we are not persuaded that a section 241.1 report was required at the disposition hearing following the revocation of D.O.'s prewardship probation.

4. *SINGLE-STATUS DEPENDENT*

D.O. contends the juvenile court erred by placing her on prewardship probation (§ 725, subd. (a)) when D.O. was a single-status section 300 dependent.[8]

Section 725, subdivision (a), provides, "After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows: (a) If the court has found that the minor is a person described by Section 601 or 602, . . . it may, without adjudging the minor a ward of the court, place the minor on probation . . . . If the minor fails to comply with the conditions of probation imposed, the court may order and adjudge the minor to be a ward of the court."

The law authorized the juvenile court to place D.O. on prewardship probation prior to adjudging her a ward of the court. (§ 725, subd. (a).) In other words, D.O. did not need to be a section 602 ward of the court in order to be placed on prewardship

[8] The People contend D.O. forfeited this contention by failing to object in the juvenile court. We choose to address the merits of the contention because it concerns an alleged violation of D.O.'s constitutional right of due process. (See *Marchand*, *supra*, 98 Cal.App.4th at p. 1061.)

probation. Accordingly, the juvenile court did not err by placing D.O. on prewardship probation prior to declaring her a ward.

D.O. contends the juvenile court erred because section 725, subdivision (a), provides, "If the court has found that the minor is a person described by Section 601 or 602." D.O. asserts that because she was not a ward, she was not a person described by section 602. Contrary to D.O.'s position, she was a person described by section 602 after the jurisdiction hearing in Ventura County. Section 602 provides, in relevant part, "[A]ny minor who . . . violates any law of this state . . . is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court." A minor comes within section 602 due to a finding the minor committed a crime, not due to a declaration of wardship. Accordingly, we are not persuaded that D.O. had to be declared a ward in order to be placed on prewardship probation (§ 725, subd. (a)).

5. *CONCLUSION*

We conclude the juvenile court did not violate D.O.'s federal constitutional right of due process.

C. INEFFECTIVE ASSISTANCE OF COUNSEL

1. *LAW*

We now turn to D.O.'s contention that she was denied effective assistance of counsel. "With respect to the right to counsel, the United States Supreme Court has held that a minor has a due process right under the United States Constitution to representation by retained or appointed counsel in adjudication proceedings to determine delinquency which may result in commitment to an institution in which the

juvenile's freedom is curtailed. [Citations.] . . . The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he [or she] has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him [or her]." ' " (*In re Kevin S., supra,* 113 Cal.App.4th at p. 108.) "Various decisions have held that the right to counsel is the equivalent of the right to effective counsel." (*Id.* at p. 115.)

To demonstrate ineffective assistance of counsel, D.O. " 'bears the two-pronged burden of showing that [her] counsel's representation fell below prevailing professional norms and that [she] was prejudiced by that deficiency.' " (*In re M.V., supra,* 225 Cal.App.4th at p. 1528.) Prejudice is demonstrated when there is " ' " 'a reasonable probability . . . that, but for counsel's failings, the result would have been more favorable to the [minor].' " ' [Citation.] A reasonable probability, the high court has said, 'is a probability sufficient to undermine confidence in the outcome.' " (*In re Champion* (2014) 58 Cal.4th 965, 1007.)

2. *WITHDRAWAL OF ADMISSION*

a. Procedural History

In Ventura County, D.O. admitted to the allegation of receiving stolen property for the "sole purposes of dispoing and transferring to Santa [*sic*] Bernardino County." D.O.'s Ventura County attorney said, "I wanted to see if the Court would allow to put on the record or in the file that it would be okay for her to withdraw that admission if she is subsequently eligible for 654 in San Bernardino County." The Ventura County

juvenile court responded, "I certainly would have no objection to the Court then making that determination."

At the transfer-in hearing in San Bernardino County, D.O.'s attorney said, "I would just argue that given the minor's risk factor, she would likely be a flight risk . . . . Regardless of when she's released, it will be to . . . a group home. . . . Given the underlying charges and her status as a dependent, this will be a [Department] lead case. . . . [¶] Given the circumstances, the risk factors, I anticipate it being a probation case." The court referred the case to the section 241.1 committee. The section 241.1 committee recommended "summary probation," but did not specify a code section for summary probation.

b. Analysis

D.O. contends her first San Bernardino County delinquency attorney provided ineffective assistance of counsel by failing to move to withdraw D.O.'s admission.

There are two types of prewardship probation. One type is set forth in section 654.2, lasts a maximum of six months, and occurs prior to the finalization of jurisdiction. If the section 654.2 prejurisdiction probation is successfully completed, then the juvenile court orders the petition dismissed. (§ 654.2, subd. (a).) The second type of prewardship probation is set forth in section 725, lasts a maximum of six months, and occurs prior to the finalization of disposition. (§ 725, subd. (a).)

In criminal cases, the county where the crime occurs has jurisdiction over the case. (Pen. Code, §§ 691, subd. (b), 777.) D.O. does not explain how a San Bernardino County court would have the authority to dismiss a delinquency petition filed by the

Ventura County District Attorney. The juvenile court's transfer-out statute only permits a transfer *after* the jurisdiction phase of the proceedings, presumably because the county in which the crime is alleged to have occurred has authority over the jurisdiction portion of the proceedings. (§ 750 ["the entire case may be transferred to the juvenile court of the county wherein such person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over such minor"].)

If D.O. had withdrawn her admission in San Bernardino County, been placed on section 654.2 probation, and successfully completed probation, then it is unclear what authority the San Bernardino County court would have had to dismiss the Ventura County petition. Because D.O. does not explain how a San Bernardino County court could dismiss a petition filed by the Ventura County District Attorney, we cannot conclude that a reasonable attorney would have moved to withdraw D.O.'s admission for the purpose of placing D.O. on section 654.2 prejurisdiction probation. Accordingly, we are not persuaded that D.O.'s attorney's performance fell below prevailing professional norms.

Next, we address prejudice. D.O. violated the terms of her section 725 probation. D.O. violated her curfew, missed school, and did not complete her community service. D.O. does not explain why she would have been more successful on section 654.2 probation than on section 725 probation. As a result, we are not persuaded that, had a motion to withdraw D.O.'s admission been successfully made, and had D.O. had been placed on section 654.2 probation, then the outcome of D.O.'s case would have been more favorable to D.O. In sum, prejudice has not been demonstrated.

D.O. contends her first San Bernardino County delinquency attorney should have moved to vacate D.O.'s admission because Ventura County's probation department and child welfare agency, and San Bernardino County's probation agency and child welfare agency were required to jointly issue a section 241.1 report prior the Ventura County jurisdiction hearing, and because that was not done, D.O.'s rights were violated.

D.O. does not explain what authority the San Bernardino County juvenile court has to review the procedures used by the Ventura County juvenile court, declare the procedures to be improper, and then permit the withdrawal of an admission based upon that appellate review. (See *In re Alberto* (2002) 102 Cal.App.4th 421, 427-428 [one trial judge cannot sit as an appellate court reviewing the actions of another trial judge].) Because it is unclear on what authority D.O.'s San Bernardino County attorney would have requested the San Bernardino County juvenile court review the actions of the Ventura County juvenile court, we are not persuaded that a reasonable attorney would have made such a motion. Therefore, we conclude counsel's performance did not fall below prevailing professional norms.[9]

---

[9] D.O. requests this court take judicial notice of the 2017 version of San Bernardino County's section 241.1 committee protocol. D.O. asserts the protocol is akin to a rule of court because the Legislature required each county's probation department and child welfare agency to create a protocol (§ 241.1, subd. (b)). In a declaration, D.O.'s appellate attorney declares that she retrieved the protocol from the San Bernardino County Court's webpage, but since that retrieval, the protocol is no longer published on the court's webpage. We grant the request for judicial notice, treating the document as an official act of a government agency. (Evid. Code, § 452, subd. (c); *In re Aaron J.* (2018) 22 Cal.App.5th 1038, 1046-1047, fn. 5 [judicial notice of San Francisco's protocol].)

DISPOSITION

The disposition order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.